

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**K.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Riverview, FL, Employer**

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**Docket No. 17-1583  
Issued: May 10, 2018**

*Appearances:*

*Daniel M. Goodkin, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

COLLEEN DUFFY KIKO, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 14, 2017 appellant, through counsel, filed a timely appeal from a March 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant met her burden of proof to establish an emotional condition as a consequence of an accepted April 17, 2012 employment injury.

On appeal counsel asserts that medical evidence submitted establishes that appellant's anxiety and depression were caused and aggravated by her accepted employment injuries.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On April 19, 2012 appellant, then a 40-year-old sales and service associate, filed a traumatic injury claim (Form CA-1) alleging that, on April 17, 2012, she sustained injuries to her knees, back, and hands when she tripped and fell while carrying boxes at work. OWCP assigned this claim File No. xxxxxx181 and accepted it for lumbar sprain, bilateral shoulder sprains, and aggravation of bilateral carpal tunnel syndrome.

Appellant stopped work on April 18, 2013 and filed an occupational disease claim (Form CA-2), adjudicated under File No. xxxxxx325. With that claim, she described perceived hostile treatment at work, alleging that it caused depression and anxiety such that she could not work. Appellant did not allege that the conditions accepted in the instant case, OWCP File No. xxxxxx181, led to increased depression and anxiety. OWCP denied the claim in File No. xxxxxx325 on March 17, 2014. File No. xxxxxx325 is not presently before the Board.

On March 25, 2015 counsel requested that the acceptance of the instant claim, OWCP File No. xxxxxx181, be expanded to include depression and anxiety secondary to medical conditions. He forwarded a psychiatric evaluation dated February 9, 2015 in which Dr. Gary K. Arthur, a Board-certified psychiatrist, noted that he began treating appellant in April 2011. Dr. Arthur indicated that appellant's depression and anxiety became increasingly debilitating and were directly related to her worsening physical problems of carpal tunnel syndrome, shoulders, and lumbar spine, and that these also worsened her diabetes. He diagnosed depression and anxiety secondary to medical conditions of bilateral shoulder derangement, lumbar disc disease, bilateral carpal tunnel syndrome, and diabetes mellitus. Dr. Arthur added that appellant's depression and anxiety had been documented since 1991, and as her work injuries increased in disability and pain, her depression and anxiety were directly, steadily aggravated and worsened and began to affect her abilities to concentrate, attend to task, and make good judgments. He concluded that appellant became totally disabled from work on April 20, 2013 and remained unable to work anywhere.

On a Family and Medical Leave Act (FMLA) application dated June 18, 2013, Dr. Arthur advised that work stress was aggravating appellant's depression, anxiety, and diabetes. He indicated that, beginning on April 20, 2013, she became totally disabled from work due to a poor ability to concentrate, attend to task, relate to others, and keep regular attendance. In an August 5, 2015 report, Dr. Arthur referenced three OWCP claim numbers and advised that bilateral carpal

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<sup>3</sup> Docket No. 16-0404 (issued April 11, 2016).

tunnel syndrome, sprain of upper shoulder and arm, and lumbar sprain aggravated her depression and anxiety. In a second August 5, 2015 report, he indicated that several months of hostile-type work environment at the employing establishment further aggravated the depression and anxiety, advising that both factors, injuries and work environment, worsened her depression and anxiety to the point of total disability from work.

On September 17, 2015 OWCP's decision denied expansion of the acceptance of the claim finding that the medical evidence was insufficient to establish that the condition was caused or aggravated by the accepted employment injury.

Appellant subsequently appealed to the Board. By April 11, 2016 decision, the Board affirmed the September 17, 2015 OWCP decision. The Board found that Dr. Arthur's opinion was of diminished probative value because he did not discuss appellant's June 7, 2013 motor vehicle accident or provide any reports between September 2013 and February 2015.<sup>4</sup>

On July 18, 2016 appellant, through counsel, requested reconsideration. He submitted a May 18, 2016 report in which Dr. Arthur noted his review of the Board's April 11, 2016 decision and additional medical evidence, including 20 pages of notes and evaluations from appellant's previous psychiatrist. Dr. Arthur advised that he had treated appellant on a monthly basis since April 2011. He reiterated his opinion that her depression and anxiety were directly caused by the injuries to her low back, shoulders, and bilateral carpal tunnel syndrome. Dr. Arthur indicated that he reviewed his treatment notes from February 24, 2012 to March 16, 2016 and provided notations to specific dates in his May 18, 2016 report. These included that on April 27, 2012 appellant reported falling at work, and that on June 18, 2013 she reported a motor vehicle accident with neck, back, hips, and bilateral arm pain. Dr. Arthur continued with notations that appellant was depressed and anxious and remained disabled from work. He reiterated that appellant's chronic depression and anxiety originated from injuries to her shoulders, low back, and bilateral carpal tunnel syndrome and were further aggravated by work conditions to the point that she could not function at work after April 18, 2013. Dr. Arthur opined that the physical injuries from the June 7, 2013 motor vehicle accident did not further aggravate her depression and anxiety and that she continued to be totally disabled.

By merit decision dated September 7, 2016, OWCP denied modification.<sup>5</sup> OWCP found that the medical evidence presented was insufficient to modify its prior decisions, noting that Dr. Arthur did not sufficiently explain how the April 17, 2012 employment injury caused appellant's diagnosed emotional condition.

Appellant, through counsel, again requested reconsideration on December 29, 2016. He asserted that the medical evidence was sufficient to establish a consequential emotional condition.

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<sup>4</sup> *Id.* In treatment notes dated June 18, 2013 to June 9, 2014, Dr. Albert Tawil, a Board-certified family physician, described appellant's medical condition resulting from a June 7, 2013 motor vehicle accident when her vehicle was rear-ended. Appellant suffered from complaints of pain and occipital headaches.

<sup>5</sup> The decision denies modification of the April 11, 2016 decision, which is a Board decision. OWCP is not authorized to review Board decisions. Although the April 11, 2016 decision was the last merit decision, OWCP's September 17, 2015 merit decision was the appropriate subject of possible modification by OWCP. See 20 C.F.R. § 501.6(d).

In a December 21, 2016 report, Dr. Arthur indicated that he had reviewed OWCP's September 7, 2016 decision. He indicated that he was aware that on April 17, 2012 appellant was carrying boxes and mail and tripped on a pallet which caused her to fall, hitting both knees. Dr. Arthur opined that the pain and physical limitations from these physical injuries contributed to her depression and anxiety.

In a merit decision dated March 28, 2017, OWCP denied modification of its prior decision. It referenced Dr. Arthur's August 3, 2015 reports which indicated that both a hostile work environment and appellant's physical conditions caused her depression and anxiety to become disabling, and also found that he did not sufficiently explain the ramifications of the motor vehicle accident, especially in light of the timing of the claim for disability.

### **LEGAL PRECEDENT**

The claimant bears the burden of proof to establish a claim for a consequential injury. As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>6</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, *The Law of Workers' Compensation* notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>9</sup>

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<sup>6</sup> Charles W. Downey, 54 ECAB 421 (2003); Leslie C. Moore, 52 ECAB 132 (2000); Gary L. Fowler, 45 ECAB 365 (1994).

<sup>7</sup> Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).

<sup>8</sup> Dennis M. Mascarenas, 49 ECAB 215 (1997).

<sup>9</sup> Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* § 3.05 (2014); see *supra* note 5.

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the diagnosed conditions of anxiety and depression were a consequence of the April 17, 2012 employment injury.

The accepted conditions are lumbar sprain, bilateral shoulder sprains, and aggravation of bilateral carpal tunnel syndrome. Appellant stopped work on April 18, 2013, and on March 25, 2015 counsel requested that the acceptance of the claim be expanded to include consequential depression and anxiety. By decision dated April 11, 2016, the Board affirmed a September 17, 2015 OWCP decision denying the claim.<sup>10</sup>

Following the Board's April 11, 2016 decision, appellant requested reconsideration and submitted reports from Dr. Arthur dated May 18 and December 21, 2016. In the May 18, 2016 report, Dr. Arthur indicated that he had treated appellant on a monthly basis since April 2011. He reiterated his opinion that her depression and anxiety were directly caused by the injuries to her low back, shoulders, and bilateral carpal tunnel syndrome. In that report, Dr. Arthur included notations from what he identified as his treatment notes from February 24, 2012 to March 16, 2016. He, however, did not forward the actual treatment notes. With regard to appellant's June 7, 2013 motor vehicle accident, Dr. Arthur indicated that the resulting physical injuries did not further aggravate her depression and anxiety, and that she continued to be totally disabled from. In his December 21, 2016 report, he described the April 17, 2012 employment injury. Dr. Arthur opined that the pain and physical limitations from these physical injuries contributed to her depression and anxiety.

It is appellant's burden of proof to establish a consequential emotional condition. The Board finds that the additional reports of Dr. Arthur are of diminished probative value. In his May 18 and December 21, 2016 reports, Dr. Arthur essentially reiterated his opinion that appellant's depression and anxiety were directly related to the accepted conditions of lumbar, and bilateral shoulder strain, as well as aggravation of bilateral carpal tunnel syndrome. While he mentioned the June 7, 2013 motor vehicle accident that occurred shortly after appellant stopped work, Dr. Arthur maintained that this did not aggravate her depression and anxiety that was diagnosed in 1991.

The Board has held that a mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is insufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.<sup>11</sup> As previously noted, to establish a consequential injury the medical evidence must establish that the consequentially claimed condition was a direct and natural result of a compensable primary injury.<sup>12</sup> Dr. Arthur offered no explanation as to how the accepted

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<sup>10</sup> *Supra* note 3.

<sup>11</sup> *Beverly A. Spencer*, 55 ECAB 501(2004).

<sup>12</sup> *Supra* note 9.

diagnosed conditions physiologically caused the alleged consequential emotional injury.<sup>13</sup> The Board, therefore, finds that he provided insufficient rationale explaining causal relationship between appellant's depression and anxiety and the accepted employment incident

Thus, as appellant has not established a consequential emotional condition, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has failed to establish an emotional condition as a consequence of the accepted April 17, 2012 employment injury.<sup>14</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2018  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> See *S.R.*, Docket No. 17-1118 (issued April 15, 2018).

<sup>14</sup> Colleen Duffy Kiko, Judge, participated in the decision, but was no longer a member of the Board effective December 11, 2017.